A **LAVENDER KEY SDN BHD**

v.

TRANSBAY VENTURES SDN BHD

B HIGH COURT MALAYA, KUALA LUMPUR
VT SINGHAM J
[ORIGINATING SUMMONS NO: 24NCVC-641-03-2012]
17 MAY 2012

C ***COMPANY LAW:*** *Winding-up - Leave to commence action against wound up company - Whether leave from winding up court must be obtained beforehand - Whether application scandalous, frivolous or vexatious - Abuse of court's process - Whether 'the court' under s. 226(3)(a) Companies Act 1965 referred to any court or winding up*
D *court*

WORDS & PHRASES: *"the court" - Companies Act 1965, s. 226(3)(a) - Wording of - Whether "court" refers to any court or winding up court*

E On 27 January 2006, the defendant company was ordered to be wound up by the High Court. The defendant, through its liquidators, then entered into a sale and purchase agreement ('SPA') to sell its property to the plaintiff. However, by neglecting to maintain and preserve the property, the defendant had
F breached the terms and conditions of the SPA. The defendant however decided to terminate the SPA and forfeited the plaintiff's deposit in the sum of RM3.5 million, contending that the plaintiff had failed to pay the balance purchase price. Through an originating summons herein, the plaintiff sought, *inter alia*, (i) for it
G to be allowed to commence any suits or proceeding against the defendant in relation to all parts of the property; (ii) for a declaration that the termination of the SPA by the defendant was unlawful, invalid and/or in breach of the SPA; and (iii) for the defendant to refund the sum of RM3.5 million to the plaintiff.
H Conversely, the defendant, by the summons in chambers ('encl. 9'), applied to strike out the plaintiff's application on the grounds that the latter's application was scandalous, frivolous or vexatious and was an abuse of the court's process. The defendant contended that the plaintiff had failed to obtain leave from the
I winding up court prior to filing the originating summons under s. 226(3)(a) of the Companies Act 1965 ('the Act'). The issues for the court's determination were: (i) whether leave of court

pursuant to s. 226(3)(a) of the Act must be obtained from a winding up court or just any court such as the present court; and (ii) whether 'the court' under s. 226(3)(a) of the Act referred to any court or winding up court.

Held (allowing defendant's application *vide* encl. 9):

(1) As a company that had been wound up, the defendant ought to obtain leave from the winding up court to commence or proceed against the defendant company. The winding up court must be appraised and informed of any proceedings or action taken against the wound up company or the liquidators who were appointed by the winding up court. (paras 10 & 13)

(2) There cannot be two different High Courts giving orders or directions under s. 226 of the Act. The term 'the court' referred in s. 226(3)(a) and (b) of the Act must have necessarily referred to the winding up court and must therefore be read together with subsection (3). 'The court' referred to in sub-s. 3(a) must have obviously referred to the court which had made the winding up order and not this court and it must be read and construed within the context of sub-s. (3) of s. 226 so as to give a purposive interpretation to sub-s. 3(a) of the Act. (paras 12 & 15)

(3) The case of *Chatib Kari v. Masbert Bhd* could be distinguished when compared to the factual matrix and the surrounding circumstances of the present case. In that case, it was the same High Court which had ordered the winding up petition which granted leave to commence proceeding against the liquidators. (para 18)

(4) There was no proper summons before this court to consider. The plaintiff did not apply for any stay of the hearing of the originating summons pending any application for leave from the winding up court except to oppose the summons in chambers. Therefore, the court had no choice but to decide this summons in chambers based on the materials available and the arguments advanced by both parties. (para 20)

Case(s) referred to:

BBMB Securities Sdn Bhd lwn. Tan Lay Hiong & Yang Lain [2002] 7 CLJ 1 HC ***(refd)***

CGU Insurance Bhd v. Asean Security Paper Mills Sdn Bhd [2001] 1 CLJ 305 CA ***(refd)***

CGU Insurance Bhd v. Asean Security Paper Mills Sdn Bhd & Other Appeals [2002] 2 CLJ 1 FC ***(refd)***

Chatib Kari v. Mosbert Bhd [1984] 2 CLJ 30; [1984] 1 CLJ (Rep) 501 HC ***(refd)***
Chi Liung Holdings Sdn Bhd v. Ng Pyak Yeow [1995] 4 CLJ 11 CA ***(refd)***
Deutsche Bank v. SP Kala (1990) 67 Com Cas 344 (Bombay) ***(refd)***
Deutsche Bank v. SP Kala (1992) 74 Com Cas 577 (Bom-DB) ***(refd)***
Koh Thong Kuang v. United Malayan Banking Corporation Berhad [1994] 4 CLJ 488 SC ***(refd)***
Megat Najmuddin Dato' Seri (Dr) Megat Khas v. Bank Bumiputra Malaysia Bhd [2002] 1 CLJ 645 FC ***(refd)***
Ooi Bee Tat v. Tan Ah Chim & Sons Sdn Bhd & Anor & Another Appeal [1995] 4 CLJ 484 CA ***(refd)***
Re Perdana Merchant Bankers Bhd [1997] 1 LNS 408 HC ***(refd)***
Yeo Yoo Teik v. Jemaah Pengadilan Sewa, Pulau Pinang & Anor [1996] 2 CLJ 628 CA ***(refd)***

Legislation referred to:
Bankruptcy Act 1967, s. 8(1)
Companies Act 1965, ss. 226(2)(b), (3)(a), (b), 236(1), 237(3)
Courts of Judicature Act 1964, s. 20
Rules of the High Court 1980, O. 18 rr. 19(1)(b), (d)

For the plaintiff - Edwin Lim; M/s Edwin Lim Suren & Soei
For the defendant - JS Hoi; M/s Lee Hishamuddin Allen & Gledhill

Reported by Najib Tamby

JUDGMENT

VT Singham J:

[1] By the originating summons dated 12 March 2012 (encl. 1), the plaintiff has applied for the following reliefs:

(1) The plaintiff be granted by this Honourable Court to commence or continue with any suits or proceeding (including proceeding under this Originating Summons) against the defendant in relation to all parts of a land under H.S. (D) 2566676, No. Lot PTB 20214, Town and District of Johor Bahru, Johor and measuring approximately 373,933 per square feet.

(2) A declaration that the termination of the SPA by the defendant is unlawful, invalid and/or in breach of the provisions of the SPA.

(3) A declaration that the completion date be extended until such time that the cost for restoring the property can be ascertained and be deducted against the balance purchase price.

(4) Alternatively, a declaration that the SPA is unlawfully rescinded by the plaintiff.

(5) The defendant to refund to the plaintiff the sum of RM3.5 million paid as deposit under the SPA, with interest thereon at the rate of 8.0% per annum from the date hereof until the date of the full refund.

(6) Costs to be paid by the defendant; and

(7) Such further or other reliefs as this Honourable Court may deem just and expedient.

[2] The brief grounds of the application as stated in the originating summons (encl. 1) are as follows:

(1) The defendant is a company incorporated in Malaysia, and was ordered to be wound-up on 27.1.2006 pursuant to an order of the High Court of Malaya at Kuala Lumpur under winding up Petition No. D7-28-13-2005. The defendant's present address is at c/o KPMG Corporate Services Sdn Bhd, Level 10, KMPG Tower, 8 First Avenue, Bandar Utama, 47800 Petaling Jaya, Selangor.

(2) By a Sale and Purchase Agreement dated 13.10.2010, (hereinafter referred to as 'the SPA') the defendant through its liquidators, Ooi Woon Chee (NRIC No. 610705-10-6373) and Ong Hock An (NRIC No. 580913-08-5859), sold the property to the plaintiff subject to the terms and conditions more particularly stated therein. The plaintiff shall refer at the trial hereof to the SPA for its full terms and effect, a copy being attached hereto as a schedule.

(3) The defendant in breach of the terms and conditions of the SPA, has failed and/or neglected to maintain and preserve the property in the condition existing from the time of the date of execution of the SPA.

(4) However, the defendant through their solicitor's letter dated 29.2.2012 terminated the SPA and forfeited the plaintiff's deposit sum of RM3.5 million on the ground that the plaintiff had failed to pay the balance purchase price by 28.2.2012.

(5) The full ground of the application is as stated in the Affidavit in Support of Ong Kok Keng affirmed on 9.3.2012.

[3] However, by the summons in chambers dated 18 April 2012 (encl. 9), the defendant has applied to strike out the plaintiff's originating summons under O. 18 r. 19(1)(b) and (d) of the Rules

of the High Court 1980 (RHC 1980) on the grounds that the plaintiff's application is scandalous, frivolous or vexatious and is an abuse of the process of the court. The defendant has further contended that the plaintiff had failed to obtain leave from the winding up court pursuant to s. 226(3)(a) of the Companies Act 1965 before filing this originating summons.

O. 18 r. 19(1)(b) and (d) of the RHC 1980 provides:

> (1) The Court may at any stage of the proceedings order to be struck out or amended any pleading or the indorsement, of any writ in the action, or anything in any pleading or in the indorsement, on the ground that
>
> b) it is scandalous, frivolous or vexatious; or
>
> d) it is otherwise an abuse of the process of the Court;
>
> and may order the action to be stayed or dismissed or judgment to be entered accordingly, as the case may be.

s. 226(3) of the Companies Act 1965 provides:

> (3) When a winding up order has been made or a provisional liquidator has been appointed **no action or proceeding shall be proceeded** with or commenced against the company except (emphasis added) –
>
> (a) by leave **of the Court**; and
>
> (b) in accordance with such terms **as the Court imposes**. (emphasis added)

[4] In opposing the plaintiff's originating summons (encl. 1) and in support of the summons in chambers (encl. 9), one of the liquidators, Mr Ooi Woon Chee who has affirmed the affidavit in support (encl. 10) has *inter alia* stated that the plaintiff cannot proceed with this originating summons without having obtained leave from the winding up court.

[5] In support of the defendant's application, learned counsel for the defendant has submitted, *inter alia* and briefly, as follows:

> (a) The defendant was ordered to be wound up on 27.1.2006 by the Kuala Lumpur High Court via Companies Winding Up No. D7-28-13-2005 (**Winding Up Court**). Gan Ah Tee and Ooi Woon Chee of KPMG Corporate Services Sdn Bhd were appointed as Liquidators of the defendant.

(b) Gan Ah Tee had subsequently resigned from KPMG Corporate Services Sdn Bhd as one of the Liquidators of the defendant. On 27.7.2007. Ong Hock An was appointed by the Winding Up Court to replace Gan Ah Tee and to act jointly and/or severally with Ooi Woon Chee as Liquidators of the defendant.

(c) The plaintiff had failed to first obtain the necessary leave from the Winding Up Court before filing the Originating Summons and the Summons in Chambers (Enclosure 5) pursuant to s. 226(3)(a) of the Companies Act 1965.

(d) The leave pursuant to s. 226(3)(a) can only be granted by the Winding Up Court and not by this Honourable Court, which is a Civil Court.

(e) Even in proceedings commenced against the Liquidators, the leave is also required from the Winding Up Court pursuant to s. 226(3) of the Companies Act 1965.

(f) Therefore, it is plain and obvious that the Originating Summons is unsustainable and ought to be struck out.

(g) The defendant respectfully prays that the Summons in Chambers (Enclosure 9) be allowed with costs and that the plaintiff's Originating Summons be dismissed.

[6] In support of his submissions, learned counsel for the defendant had referred to the following authorities:

1. Rules of the High Court, 1980
2. Companies Act, 1965
3. *CGU Insurance Bhd v. Asean Security Paper Mills Sdn Bhd* [2001] 1 MLJ 511, CA
4. *CGU Insurance Bhd v. Asean Security Paper Mills Sdn Bhd and other appeals* [2002] 2 MLJ 1, FC
5. *Chi Liung Holdings Sdn Bhd v. Ng Pyak Yeow* [1995] 4 CLJ 11
6. *Bandar Builder Sdn Bhd & 2 Ors v. United Malayan Banking Corporation Bhd* (1993) 4 CLJ 7

[7] In opposing the defendant's application to strike out the originating summons, learned counsel for the plaintiff had submitted, *inter alia* and briefly, as follows:

A (a) There is no requirement in law that leave of the court pursuant to s. 226(3)(a) of the Companies Act to commence this proceeding must be obtained from the Winding Up Court.

B (b) Leave as required under s. 226(3)(a) of the Act could also be obtained from this court and he has relied on the case of *Chatib bin Kari v. Mosbert Bhd (In Liquidation* [1984] 2 MLJ 67.

C (c) The term 'the court' under s. 226(3)(a) refers to any court and does not necessarily refer to the Winding Up Court.

D (d) The High Court Johor Bahru which was not a Winding Up *Court in Chatib bin Kari v. Mosbert Bhd (In Liquidation* [1984] 2 MLJ 67 had granted leave under s. 226(3)(a) of the Act to the applicant to commence proceeding against the defendant company.

(e) Accordingly, the plaintiff has correctly applied for leave from this court by the Originating Summons (Enclosure 1) prayer (a).

E (f) Pray that the Summons in Chambers (Enclosure 9) be dismissed and that this court grant leave to the plaintiff as in prayer (a) of the Originating Summons.

[8] In support of his submissions, the learned counsel for the plaintiff had referred to the following authorities:

F 1. Companies Act, 1965 (Regulations, Rules & Order)

2. *Chatib bin Kari v. Mosbert Bhd (In Liquidation)* (1984) 2 MLJ 67

G 3. *Mosbert Bhd v. Chatib Kari & Another Case* (1984) 1 CLJ 270

4. *Mosbert Berhad (In Liquidation) v. Stella D'Cruz* (1985) 2 MLJ 446

Decision

H **[9]** Having gone through the saman dalam kamar (encl. 9), affidavit sokongan of the defendant (encl. 10), the affidavit in reply of the plaintiff (encl. 11), the written and oral submissions with the authorities submitted by both parties and the research carried out I by this court, the decision of this court is:

[10] The defendant being a company which has been wound up by the winding up court on 27 January 2006 *vide* companies Winding Up No. D7-28-13-2005 (see exh. A1 of the affidavit in support of the liquidator) ought to obtain leave from the winding up court to commence or proceed against the defendant company and not from this court which is under the civil division of the High Court, Kuala Lumpur.

[11] The defendant company was ordered to be wound up on 27 January 2006 by the winding up court which is under commercial division of the High Court, Kuala Lumpur. The appointment of the liquidators pursuant to the winding up order was made by the winding up court and the appointment of Mr Ong Hok An was also made by the winding up court on 27 July 2007 to replace Mr Gan Ah Tee who had subsequently resigned after he was appointed as one of the liquidators of the defendant company.

[12] The term 'the court' referred in the sub-s. (3)(a) and (b) of s. 226 of the Companies Act 1965 must necessarily refer to the winding up court as 'the court' referred to in sub-sub (a) and (b) must be read together with sub-s. (3). Subsection (3) of s. 226 reads 'When a winding up order has been made or a provisional liquidator has been appointed no action or proceeding shall be proceeded with or commenced against the company except "by leave of the court". 'The court' referred in sub-s. 3(a) must obviously refer to 'the court' which had made the winding up order and not this court and it must be read and construed within the context of sub-s. 3 of s. 226 so as to give a purposive interpretation to sub-s. 3(a) of the Act.

[13] In addition, the winding up court has also directed the liquidators to carry out certain duties as provided in the said winding up order dated 27 January 2006 and that the costs of that application be paid out from the assets of the defendant company. Further, the order dated 27 July 2007 which had appointed Mr Ong Hock An to replace Mr Gan Ah Tee who had subsequently resigned as one of the liquidators of the defendant company contains an order that the costs of the application to be borne by the assets of the defendant company. Consequently and based on the said order by the winding up court, this court is of the considered view that the winding up court must be appraised

and informed of any proceedings or action taken against the wound up company or the liquidators who were appointed by the winding up court. Leave of 'the court' as envisaged by sub-s. (3)(a) and (b) of s. 226 of the Companies Act must necessarily refer to the winding up court and not this court which is a High Court under the civil division.

[14] Further, s. 236 of the Companies Act which requires the liquidator to carry out his function with the authority either of 'the court' or the of the committee of inspection as stipulated in sub-s. (1) of s. 236 and the powers to be exercised by the liquidator conferred by this section which shall be subject to the control 'of the court' must necessarily also refer to the winding up court. (see also s. 237(3) which must also refer to the winding up court where the liquidators will apply for directions in relation to any particular matter arising under the winding up). (see *CGU Insurance Bhd v. Asean Security Paper Mills Sdn Bhd* [2001] 1 CLJ 305; [2001] 1 MLJ 511 at pp. 516, 519, *Re Perdana Merchant Bankers Bhd* [1997] 1 LNS 408, *Deutsche Bank v. SP Kala* (1990) 67 Com Cas 344 (Bombay) and affirmed in *Deutsche Bank v. SP Kala* (1992) 74 Com Cas 577 (Bom-DB), *Chi Liung Holdings Sdn Bhd v. Ng Pyak Yeow* [1995] 4 CLJ 11; [1995] 3 MLJ 204 at p. 209, *CGU Insurance Bhd v. Asean Security Paper Mills Sdn Bhd & Other Appeals* [2002] 2 CLJ 1).

[15] Section 226(2)(b) of the Act has also referred 'to the court', *inter alia* 'in such manner that "the court" direct'. Surely, 'the court' referred to in sub-s. (2)(b) must by implication and necessarily refer to the winding up court. In other words, there cannot be two different High Courts giving orders or directions under s. 226 of the Act. The liquidators having been appointed by the winding up court on 27 January 2006 and (substituted by an order of court dated 27 July 2007), is an officer of the court. Therefore, leave of the court which had appointed the liquidators, being the winding up court, is required before an action is commenced against the defendant company or the liquidators.

[16] This court can take judicial notice that where a High Court is situated in the states, there is no separate winding up court or division to deal solely with matters relating to winding up proceedings. The High Courts situated in the states hear, deal and decide all cases filed at the High Court as directed by the Chief

Judge of Malaya (see s. 20 of the Courts of Judicature Act 1964). Whereas the High Court, Kuala Lumpur has a separate division to deal with the matters filed in court as provided by the Practice Direction No. 1 of 2008.

[17] Be that as it may, in the present case, the nature of the reliefs sought by the plaintiff, particularly, prayers (2), (3), (4), (5) and (6) of the originating summons (encl. 1), has far-reaching implication in so far as the liquidators and the assets of the defendant company. Accordingly, it is only appropriate and desirable that the application for leave to commence this proceeding be obtained from the winding up court as envisaged by s. 226(3)(a) of the Act.

Practice Direction No. 1 of 2008 provides that:

ARAHAN AMALAN NO. 1 TAHUN 2008
DALAM MAHKAMAH TINGGI DI
KUALA LUMPUR
(BAHAGIAN-BAHAGIAN)
MAHKAMAH TINGGI MALAYA

Yang Amat Arif Hakim Besar Malaya dengan ini mengarahkan bahawa bermula 1 Mac 2008, Mahkamah Tinggi Kuala Lumpur disusun semula menurut bahagian-bahagian berikut

(a) Bahagian Sivil;

(b) Bahagian Dagang;

(c) Bahagian Rayuan/Perkara-Perkara Pelbagai;

(d) Bahagian Jenayah

3. Hal perkara tiap-tiap bahagian adalah seperti berikut and, *inter alia*:

3.1 BAHAGIAN SIVIL

3.2 BAHAGIAN DAGANG

3.2.5 Akta Syarikat 1965 (Akta 125)

(a) Penggulungan Syarikat

(b) Debentur

(c) Saham dan syer

A While the practice direction may arguably have no statutory authority or force of law, but, however, once it has been properly and legally issued pursuant to s. 20 of the Courts of Judicature Act 1964, it has to be complied with. (see *Ooi Bee Tat v. Tan Ah Chim & Sons Sdn Bhd & Anor & Another Appeal* [1995] 4 CLJ 484 B at p. 488, *Yeo Yoo Teik v. Jemaah Pengadilan Sewa, Pulau Pinang & Anor* [1996] 2 CLJ 628 at p. 630, *Megat Najmuddin Dato' Seri (Dr) Megat Khas v. Bank Bumiputra Malaysia Bhd* [2002] 1 CLJ 645 at p. 661, *Koh Thong Kuang v. United Malayan Banking Corporation Berhad* [1994] 4 CLJ 488; [1994] 3 MLJ 509 at C p. 513).

> A judge in winding-up is the custodian of the interests of every class affected by the liquidation. It is his duty even if it be in a voluntary liquidation that opportunity offers to see to it that all assets of the company are brought into the winding-up. In D authorizing proceedings, especially if they may or will involve some drain upon the assets, he must satisfy himself as to their probable success; where, as in the present case, they involve no possible charge on assets, he will nevertheless be careful to see that any action taken in the company's name under his authority E is not vexatious or merely oppressive. (see *Lloyd-Owen v. Bull* [1936] 4 DLR 433 PC, referred to in *Chi Liung Holdings Sdn Bhd v. Ng Pyak Yeow* [1995] 4 CLJ 11 at p. 15)

[18] As a matter of fact, in *Chatib Kari v. Mosbert Bhd* [1984] 2 CLJ 30; [1984] 1 CLJ (Rep) 501, it is the same High Court F which had ordered the winding up petition which granted leave to commence proceeding against the liquidators. Therefore, the case relied on by learned counsel for the plaintiff to support his argument can be distinguished when compared to the factual matrix and the surrounding circumstances in the present case.

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> In *Chatib bin Kari v Mosbert Bhd (In Liquidation* [1984] 2 MLJ 67, the Winding Up file was before His Lordship Shanker J (later JCA) to be appraised of the factual matrix of the Winding Up order.

H Shanker J (later JCA) said at p 73:

> There is no such separation of powers in the High Court at Johore Bahru and if there was any irregularity in Chatib's application not being made in the Winding-up file it went to form rather than substance.

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Accordingly, the High Court in the states have the power to hear and decide matters in respect of winding up proceeding and any application for leave to commence or proceed with the action of a wound up company as ordered by the winding up court of the commercial division, Kuala Lumpur must necessarily be made to the winding up court.

In *Mosbet Limited v. Chatib Kari* [1984] 1 CLJ (Rep) 270, the issue of the plaintiff not having obtained leave from the Winding Up Court was not a ground and neither was any arguments raised on the point of law at the Supreme Court as to whether the High Court Johor Bahru which did not have a separate Winding Up Court was correct in granting leave pursuant to s. 226(3)(a) of the Companies Act. The Supreme Court at p. 273 said:

> 'the Appellant company accepted the Learned Judges ruling on the granting of leave to commence the civil suit but were dissatisfied with his ruling on the extension of the caveat.' Accordingly, the appeal was against that part of the learned judges decision.

Further, in *Mosbet Limited v. Chatib Kari*, nothing was canvassed, argued or decided on the issue of leave having not been granted by the Winding Up Court as raised in the present case and the Supreme Court did not decide on the issue of law.

In *Mosbert Berhad (In Liquidation) v. Stella D'Cruz* [1985] 2 MLJ 446 the Supreme Court said at p. 447:

> the primary object of winding up is the collection and distribution of the assets of the company *pari passu* amongst unsecured creditors after payment of preferential debts. And the purpose of the statutory provision is to ensure that all claims against the company in liquidation which can be determined by the cheap and summary procedure available in a winding up are not made the subject of expensive litigation. The provision is designed to prevent unnecessary multiplicity of suits which may result in dissipating the assets of the company. *It is for this reason that application under s. 226(3) of the Companies Act 1965 should be made inter partes so that the summons could be served on the Official Receiver who should be heard before the discretion of the Court is exercised.* Without hearing the Official Receiver the Court cannot be said to have exercised the discretion judicially. (emphasis added).

A In short, the Court will always give an applicant leave if his claim cannot be dealt with adequately in the winding up or if the remedy he seeks cannot be given to him in a winding up proceedings. We think the learned judge had applied the correct test laid down in *Re Cuthbert Lead Smelting Co* (1886) WN 84 and we agree with him that leave should be given pursuant to s. 226(3) of the Companies Act 1965 to the respondent to commence proceedings against *Mosbert Berhad (In Liquidation)* in respect of her claim to Private Lot No. 460 in Johore Grant No. 72 for Lot No. 83 in the Mukim of Plentong in the District of Johore Baru.

In *Eastern Holdings Establishment of Vaduz v. Singer & Friedlander Ltd (Able Securities Ltd, In liquidation First Claimant; Sempah (Holdings) Ltd, Second Claimant)* [1967] 2 All ER 1192 *(refd)*, the Chancery Division of the High Court was held not to be the proper venue for an interpleader summons to which a company in liquidation was a respondent. It was held that the proper Court was the Companies Court and leave of that Court had first to be obtained since an interpleader summons was a proceeding against the company.

[19] As for the case *BBMB Securities Sdn Bhd lwn. Tan Lay Hiong & Yang Lain* [2002] 7 CLJ 1 relied on by learned counsel for the plaintiff and submitted recently with further written submissions, this court is of the respectful view that the case has no application to the facts in the case before this court, and is distinguishable on the facts and the surrounding circumstances. The facts and the surrounding circumstances in that case is special to that case and the learned judge has given his reasons for allowing the application for leave to be made at the High Court, Kuala Lumpur under s. 8(1) of the Bankruptcy Act 1967 and the basis of the reasons are also distinguishable and is not binding on this case when considering to the nature of the plaintiff's claim against the defendant and the reliefs as contained in the originating summons and the reasons given by this court in allowing the defendant's application to strike out the plaintiff's originating summons in the present case.

[20] Be that as it may, since learned counsel for the plaintiff did not apply for any stay of the hearing of the originating summons pending any application for leave from the winding up court except

to oppose the summons in chambers (encl. 9), this court has no choice but to decide this summons in chambers (encl. 9) based on the materials available and the arguments advanced by both parties. In fact, it is regrettable that learned counsel for the plaintiff was not prepared to make any concession to the defendant's application to strike out the originating summons, such as, to apply for a stay of the hearing of the originating summons pending an application for leave from the winding up court. Consequently, there is no proper summons before this court to consider. Accordingly, and for the reasons advanced above, the summons in chambers (encl. 9) is allowed. In accordance with the rules of reasons and justice, the originating summons is struck out with costs.